APPENDIX A

Sec. 301(a) of the Labor-Management Relations Act of 1947 (29 U.S.C. § 185(a), 61 Stat. 156):

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Sec. 1448-a of the New York Civil Practice Act, effective April 9, 1962:

> Arbitrability not to depend upon merits of claims. In determining any matter arising under this article, the court or judge shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute.

Sec. 1462 of the New York Civil Practice Act:

> Motion to vacate awards. In either of the following cases, the court must make an order vacating the award, upon the application of any party to the controversy which was arbitrated.
>
> 1. Where the award was procured by corruption, fraud or other undue means.
>
> 2. Where there was evident partiality or corruption in the arbitrators or either of them.
>
> 3. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
>
> 4. Where the arbitrators, or other persons making the award exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject-matter submitted was not made.

5. If there was no valid submission or contract, and the objection has been raised under the conditions set forth in section fourteen hundred fifty-eight.

Where an award is vacated, the court, in its discretion, may direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the submission or contract for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

Where the court vacates an award, costs not exceeding twenty-five dollars and disbursements may be awarded to the prevailing party; and the payment thereof may be enforced in like manner as the payment of costs upon a motion in an action.

APPENDIX B

Arbitrator's Decision

IN THE MATTER OF

The Arbitration between GRACE LINES, INC., and NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

This is the second of two issues presented to the undersigned, as Arbitrator, for final and binding decision. The opinion and the award on the first issue was decided on 22 August 1962. The issue to be considered here involves a claim for severance pay allegedly arising under an arbitration award dated 9 July 1959. This claim arose as the result of the sale and transfer by the Company of two of its vessels to foreign registry, the *S.S. Santa Paula* and the *S.S. Santa Rosa.*

The agreement between the Company and the Union which became effective 16 June 1958 incorporated for the first time a clause referring to a severance pay program. Section 43(c) of that agreement provided for further negotiations and prospective arbitration and stated:

> The issue of incorporating into the agreement a clause embodying the general principle that some sev-

erance allowance should be made in the case of an Engineer who has permanently lost his position by reason of the transfer or sale of his vessel to foreign registry. If this issue is submitted to arbitration, the Arbitrator shall consider first whether a severance pay program is suitable and practical for the industry, and, if in the affirmative, then he shall determine the basic provisions for a suitable and practical severance pay plan which shall have as one factor the length of continuous service of the employee affected.

On 11 June 1958 the *S.S. Santa Paula* went into laid up status. Almost four months later, on 8 October 1958, the *S.S. Santa Rosa* entered laid up status.

Following agreement on the above clause, an arbitration proceeding was held on a severance pay claim. This proceeding began in November, 1958 and Arbitrator Shipman handed down his award on 9 July 1959. By its terms, this award was made applicable to the transfer or sale of any vessel to foreign registry which took place following the commencement of the arbitration proceeding.

The *S.S. Santa Rosa* was sold and transferred to foreign registry on 4 April 1961 and the *S.S. Santa Paula* was sold and transferred to foreign registry on 20 July 1961.

During the period the vessels were in laid up status, the Company employed three licensed engineers, who were members of the Union, aboard each vessel. And during this period the Company made contributions on behalf of these employees, as required by the then outstanding collective agreement, to the Union's Pension and Welfare Plan and the Union's Vacation Plan. An official from these plans testified that in no case do the plans accept contributions from a Company unless such Company has a collective agreement with the Union and then only in behalf of the employees covered by such agreement. Furthermore, the plan official stated that the engineers referred to above for whom the contributions were made by

the Company did, in fact, receive the benefit set forth in the several plans.

During this same period, namely the period the vessels were in laid up status, the Company testified that it considered putting them in the Cuban trade but that the sudden change in government in Cuba made this an unlikely prospect.

Sometime between July and September 1961 the Company and the Union executed a new agreement which was made effective as of 16 June 1961 and this new agreement incorporated as one of its provisions the terms and conditions of the Shipman Award.

A Union official testified that prior to the ratification of the agreement which became effective 16 June 1961, the Company notified the Union that it did not consider the *S.S. Santa Rosa* and the *S.S. Santa Paula* to fall within the terms and conditions of the Shipman Award. The Union official testified that because the Company adopted this position, the Union refused to ratify the agreement until and unless the Company agreed to consider both vessels as being within the terms and conditions of the Shipman Award. The Union official further testified that the Company so agreed but with the understanding that the Company retained the right to offer any defense against the claims for severance. This testimony was not contradicted by the Company.

In its defense, the Company contended that neither the agreement effective 16 June 1958 nor the agreement effective 16 June 1961 are applicable in any respect to the *S.S. Santa Paula* since that vessel entered laid up status on 11 June 1958. Furthermore, the Company contended that the terms and provisions of the Shipman Award cannot be considered applicable to either the *S.S. Santa Paula* or the *S.S. Santa Rosa* since both vessels were in laid up status prior to the issuance of the Award.

The Company also argued that even if the terms and conditions of the Shipman Award were made applicable to these two vessels, in view of the fact that none of the last regularly employed engineers aboard the *S.S. Santa Paula* or the *S.S. Santa Rosa* severed their employment relationship with the Company, the Union claim must be denied.

And finally, the Company held that the Shipman Award should not be made applicable to this situation in which the Company brought into operation two new vessels to replace the two vessels sold and by doing this more than doubled the number of jobs available to licensed engineers.

The Union, on the other hand, maintained that the *S.S. Santa Rosa* and the *S.S. Santa Paula* must be considered to fall within the provisions of the agreement which became effective 16 June 1958 as well as the agreement which became effective 16 June 1961. In addition to such facts as the employment of licensed engineers aboard the vessels during the period they were in laid up status, the contributions made to the various plans on behalf of these engineers, the continuing consideration by the Company of the possible reactivation of the two vessels and the agreement made by the Company and the Union as a condition for the ratification of the 16 June 1961 agreement, the Union pointed to several provisions of the 16 June 1958 agreement which covered vessels while in laid up status to show that the *S.S. Santa Paula* and the *S.S. Santa Rosa* were, in fact, covered by the aforesaid collective agreements. (Sections 1, 27 [a], 27 [b], 29 [2] and 29 [8].)

Further, the Union argued, the terms and conditions of the Shipman Award are specifically applicable for the benefit of the permanent engineers assigned to the vessels immediately prior to their lay up, regardless of whether or not they continued in the employ of the Company. And, said the Union, the fact that the two new vessels provide in total more jobs than on the two vessels sold, is completely irrelevant. In support of this contention, the Union cited other awards by Arbitrator Shipman.

The issues presented to the Arbitrator in this matter would appear to be as follows:

1. Are the agreements which became effective 16 June 1958 and 16 June 1961 applicable to the *S.S. Santa Paula?*

2. Assuming that both agreements are applicable, nevertheless, is the Shipman Award applicable to either the *S.S. Santa Paula* or the *S.S. Santa Rosa* in view of the fact that they were in laid up status prior to the issuance of the award?

3. Assuming that the two vessels are subject to the terms of the Award, do the facts in this particular matter prohibit the applicability of the terms and conditions of the Award?

On the basis of the several provisions of the 16 June 1958 agreement and the 16 June 1961 agreement cited by the Union, it appears that the *S.S. Santa Paula*, though in laid up status from 11 June 1958, nevertheless was covered by said agreements. These provisions are specifically addressed to vessels which are in a laid up status. This conclusion is supported by the action of the Company in making contributions to the several Union plans on behalf of the licensed engineers employed during the laid up status period. Further, the agreement between the Union and the Company as a condition precedent for the ratification of the 16 June 1961 agreement would definitely place the *S.S. Santa Paula* and the *S.S. Santa Rosa* under the 16 June 1958 and the 16 June 1961 agreements. It appears clear that the understanding reached at such time preserving the defenses of the Company did not include any defense that the *S.S. Santa Paula* was not under said agreements. Otherwise, the understanding would have been meaningless.

Though the *S.S. Santa Paula* and the *S.S. Santa Rosa* were laid up prior to the issuance of the Shipman Award,

these two vessels were certainly subject to its provisions. The Shipman Award was expressly made applicable to all vessels sold and transferred to foreign registry subsequent to the commencement of that proceeding. As previously stated, that proceeding began in November 1958. The award, dated 9 July 1959, reads, in part: "A transfer of vessel shall include any disposition thereof regardless of whether (a) it occurs when the vessel is in active operation or *in a laid up status.*" (Italics supplied.)

Thus, the first two issues set forth above are answered in the affirmative.

There remains the question of whether or not, under the facts in this particular matter, the transfer and sale of the two vessels in question fall within the terms of the Shipman Award.

If this dispute was being presented to this Arbitrator as a *de novo* matter, the facts set forth by the Company would be most cogent. As stated by the Company, and not disputed, the two new vessels brought into operation do provide the licensed engineers with more job opportunities than were lost by the sale and transfer of the *S.S. Santa Rosa* and the *S.S. Santa Paula.* Furthermore, the engineers employed on the vessels which were sold all continued in the employ of the Company.

It may well be that under such circumstances severance pay would not be granted if the issue were being submitted to arbitration as one of first impression.

However, that is not the issue before this Arbitrator. The question here is whether the terms of the Shipman Award apply to the engineers last regularly assigned to the *S.S. Santa Paula* and the *S.S. Santa Rosa* preceding their transfer to foreign registry. Whatever may have been the respective position of the Union and the several Companies (of which Grace Lines was one) before Arbitrator Shipman, his Award represents the binding decision

which became a part of the outstanding agreement between the parties to be applied but not amended or altered by this Arbitrator.

In the Shipman Award the Arbitrator specifically addressed himself to the question whether employment or an offer for employment with the same employer should be a basis for denying severance pay and the answer was in the negative. He said, in part:

> Further, in the face of the hiring hall system in operation in this industry, it would appear that an offer of a job by a Company to a displaced engineer may simply deprive another engineer of such opportunity. In the shore side analogy, such latter employee would receive the severance pay; but any such provision is, obviously impractical for maritime.

Thereafter, the same question arose in two cases and were presented to Mr. Shipman for interpretation of his Award. In the *Dolphin Steamship* case Arbitrator Shipman held:

> It is immaterial that the engineer did not retain his employment status with the Company. The need for severance pay, rests on the fact 'that a transfer of a vessel necessarily decreases the job opportunities for engineers' (Severance Pay Award p. 3). Thus, whether the licensed engineer is reemployed by the same Company on another vessel or by another Company on the date of transfer, it is, nonetheless clear that he has merely displaced another engineer. The permanent loss of employment opportunity, which is the essence of the Severance Pay Award remains unaffected.

In the Edison Steamship case, Arbitrator Shipman concluded as follows:

> The essence of his Severance Pay Award is the permanent loss of employment opportunity for the displaced engineers aboard the vessel transferred.
>
> It is true that during the lay-up period there is loss of employment. But it is only when the vessel is trans-

ferred foreign that all further opportunity for employment thereon is terminated. The right to severance pay does not vest until such transfer takes place.

Nor is it material whether a licensed engineer has obtained other employment with the same or any other company on the date of transfer. For it is clear that by so doing, he has merely displaced another licensed engineer.

Both decisions were apparently appealed to the New York State Supreme Court and were sustained.

The Shipman Award does not afford any exception to its application, where a Company which transfers a vessel to foreign registry, acquires another American flag vessel offering an equal or greater number of jobs as compared with the transferred vessel. In the absence of any such express provision, for this Arbitrator to deny the applicability of the Shipman Award because of the job opportunities made available through the new *S.S. Santa Rosa* and *S.S. Santa Paula* would be an amendment to such award which is beyond his authority.

Finally, the Arbitrator is of the opinion that insufficient evidence is in the record on the basis of which a determination can presently be made as to which specific engineers are entitled to the severance compensation and the amounts for each.

Therefore, having been duly designated as Arbitrator under the terms of the collective agreement between the Company and the Union, and having heard all testimony and read all proof, the undersigned hereby renders the following:

AWARD

1) That the claim of the Union for severance pay for the regular licensed engineers permanently assigned at the time of the last regular full voyage of the old S.S. Santa Paula and S.S. Santa Rosa preceding their respective

transfers to foreign registry, regardless of whether they were working on said vessels during said voyage, be granted.

2) That the computation of the amount due each licensed engineer shall be made in accordance with the provisions of the Shipman Award dated 9 July 1959.

3) That the computation of the exact amounts due and the determination of the specific licensed engineers who are entitled to such payments are remanded to the parties for determination and agreement by them. Should they, within three weeks from the date hereof, unless the time is extended by their mutual agreement, be unable to arrive at such computation and determination, then upon notice to him by either of them, the undersigned will set a date to hear and take further testimony and will thereafter render a further Award with respect to this issue. He is for these purposes retaining jurisdiction.

Dated: 3 October 1962

D. F. SHAUGHNESSY
Arbitrator

State of New York,
County of New York, ss.:

On this 3rd day of October, 1962, before me personally came and appeared Donald F. Shaughnessy to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

ANNA O. CUSHING
Notary Public, State of New York
(Remainder of Notary's Stamp illegible.)

Special Term Opinion

SUPREME COURT, NEW YORK COUNTY

SPECIAL TERM, PART I

Lorenz, Finn & Giardino (Alfred Giardino, C. P. Lambos, Luis M. Neeo, of Counsel) for Petitioner.

Lee Pressman (David Scribner, of Counsel) for Respondent.

HOFSTADTER, J.:

The court reaches the conclusion here stated with the utmost reluctance, for it permits an anomaly—confirmation of an award of severance pay to licensed ship engineers who have remained continuously and still are in the employ of the very steamship line which under the award must give them the "severance pay."

The petitioner, Grace Line, Inc. (Grace Line) moves to vacate and the respondent National Marine Engineers' Beneficial Association (MEBA), a union, representing licensed marine engineers, moves to confirm the award of an arbitrator, granting severance pay to ten engineers employed on two of Grace Line's ships.

On June 20, 1958, Committee for Companies and Agents, the collective bargaining agent for Grace Line and others in the industry, entered into a collective bargaining agreement with MEBA, made retroactive to June 16, 1958. The agreement provided that certain issues should be negotiated and that if agreement was not reached on any one of them by August 1, 1958, either party should have the right to have the same submitted to arbitration. Among the issues so left open was that of a severance pay program, arbitration of which was provided for as follows:

> "c) The issue of incorporating into the agreement a clause embodying the general principle that some

severance allowance should be made in the case of an engineer who has permanently lost his position by reason of the transfer or sale of his vessel to foreign registry. If this issue is submitted to arbitration, the arbitrator shall consider first whether a severance pay program is suitable and practical for the industry and if in the affirmative then he shall determine the basic provisions for a suitable and practical severance pay plan which shall have as one factor the length of continuous service of the employee affected."

The parties did not reach agreement on this issue, and it was accordingly submitted to Mitchell M. Shipman, the arbitrator named in the collective bargaining agreement. His award made on July 9, 1959, and known as the Shipman award, laid down the terms of the severance pay program, which thus became part of the 1958 collective bargaining agreement. So far as here material it reads:

"The Arbitrator does hereby determine and award that:

(1) A severance pay program is suitable and practical for the licensed engineers covered by the collective bargaining agreements between the Union and the respective Companies.

(2) The terms and conditions of the severance pay program shall be as follows:

Whenever a Company transfers a vessel to foreign registry, it shall give severance pay to the regular licensed engineers assigned to such vessel.

A transfer of a vessel shall include any disposition thereof regardless of whether (a) it occurs when the vessel is in active operation or in a laid-up status; and (b) is made directly by the Company or by the Company in an affiliate or subsidiary, which, in turn, makes the disposition to foreign registry.

The regular licensed engineers entitled to severance pay shall be the full complement of licensed engineers permanently assigned to the vessel at the time of its last regular full voyage preceding the transfer, regard-

less of whether they were actually working on the vessel during said voyage.

* * * * * *

"This Award shall be effective as of the date hereof but, shall apply to any transfer or sale of any vessel to foreign registry subsequent to the commencement of this arbitration proceeding."

The disputed claim for severance pay, upheld in the award here challenged, arises out of the decommissioning of two obsolete vessels of the Grace Line, the S. S. Santa Paula and the S. S. Santa Rosa and their later transfer to foreign registry. The S. S. Santa Paula was decommissioned on June 11, 1958, the S. S. Santa Rosa on October 8, 1958, and each vessel remained in laid-up status from the date of decommissioning until her transfer to foreign registry in April and July of 1961. The two old vessels so laid-up and eventually sold to a Greek steamship corporation were, however, replaced by new vessels of the same name. The new Santa Rosa was commissioned and placed in service on June 12, 1958, and the new Santa Paula on October 9, 1958. Thus, each of the two obsolete vessels when laid-up was immediately replaced by the new vessel which entered into active service.

The old S. S. Santa Paula and S. S. Santa Rosa were each manned by five licensed engineers; each of the new vessels employs twelve, so that the replacement by the new ships has created fourteen new jobs. While the old ships were in laid-up status the Grace Line employed licensed engineers, members of MEBA, aboard each and made contributions on their behalf, to the Union's Pension and Welfare Plan and its Vacation Plan, as required by the collective bargaining agreement. Each of the regular licensed engineers assigned to the old S. S. Santa Paula and S. S. Santa Rosa has been employed by the Grace Line without interruption ever since the vessel on which he served was put in laid-up status.

MEBA, however, asserted that since the two old vessels had in 1961 been sold and transferred to foreign registry, the engineers theretofore assigned to them were entitled to severance pay under the Shipman award. On Grace Line's refusal to make payment, the parties submitted their dispute to Donald F. Shaughnessy, the permanent arbitrator under the new 1961 collective bargaining agreement between the Committee and MEBA. His award, dated October 3, 1962, allowing the severance pay so claimed, is attacked by Grace Line as utterly irrational, contrary to the intent of the parties, and a perverse misconstruction of their agreement. Grace Line insists that an award so devoid of reason constitutes an excess of power and the type of misbehavior which justifies vacating it.

The court has already expressed its own want of sympathy with the award so denounced by Grace Line. However, as we shall see, the question whether the award should be confirmed or not does not hinge on the court's concurrence with the arbitrator's decision.

Before taking up Grace Line's main contention, it is desirable to dispose of a subsidiary argument advanced by Grace Line—that because the old S. S. Santa Paula had been withdrawn from service and her engineers transferred to the replacement vessel before the 1958 collective bargaining agreement took effect and both vessels had been so withdrawn before the July 9, 1959 Shipman award, retroactive to November 1958, the time of the commencement of the arbitration proceedings, the Shipman award cannot rationally apply to these vessels. I find this argument completely without substance. It is answered most persuasively in the Shaughnessy award, which points out that, while these two ships were in laid-up status, licensed engineers were employed aboard them and contributions made to various union plans on their behalf, and that Grace Line, besides giving continuing consideration to their possible reactivation, agreed with MEBA as a

condition of the latter's ratification of the new collective bargaining agreement effective June 16, 1961, to consider the S. S. Santa Rosa and the S. S. Santa Paula within the terms of the Shipman award, subject to its right to offer any defense against the claims for severance pay. It is significant that the new 1961 agreement incorporates the Shipman award as one of its provisions.

The Shaughnessy award rests on the prior Shipman award. The thrust of Grace Line's attack on the Shaughnessy award is that the severance pay program was, as its very name implies, intended to compensate for the loss of jobs or job opportunities and that here, not alone were the engineers who, under the award, are to receive severance pay, in the uninterrupted employ of the Line, but job opportunities were increased, not diminished, through the replacement with the two new vessels, employing fourteen more engineers. Grace Line urges that under the Shipman award two factors must concur to support a claim for severance pay: (1) loss of employment or job opportunity, and (2) transfer to foreign registry, and that if either is absent there is no tenable basis for the allowance of severance pay.

It cannot be gainsaid that the loss of employment was an important, if not a prime, consideration in the formulation of the severance pay system for this industry. The provision in the June 16, 1958 collective bargaing agreement for arbitration of the issue has the quoted reference to "an engineer who has permanently lost his position by reason of the transfer or sale of his vessel to foreign registry." The Shipman opinion, as distinguished from the award proper, has like references at various points to permanent loss of position, decreasing job opportunities and displaced employees. Yet, the award itself, already quoted, declares flatly and unequivocally, that whenever "a Company transfers a vessel to foreign registry, it shall give severance pay to the regular licensed engineers

assigned to such vessel." If makes no exceptions; it imposes no conditions. So arbitrator Shaughnessy read and applied it to the dispute submitted to him. It is manifest from his opinion that he was fully aware that the two new vessels provided the licensed engineers with more job opportunities than were lost by the sale and transfer of the old ones and that the engineers employed on the latter were not displaced, but remained in Grace Line's employ. He pointedly commented: "It may well be that under such circumstances severance pay would not be granted if the issue were being submitted for arbitration as one of first impression." It was his view, however, that the Shipman award constrained him to find as he did; his duty, he said, was to apply, not to amend or alter the Shipman award.

If arbitrator Shaughnessy's interpretation of the Shipman award stands, as I conclude it must, then Grace Line's grievance is in reality directd against the Shipman, rather than the Shaughnessy award. Yet the Committee accepted the Shipman award without question. Not alone did it not subject the award to judicial review, but it affirmatively ratified it when, as above noted, it embodied it in the 1961 collective bargaining agreement.

The doctrine that an award concludes the parties on all the issues, both of fact and of law, submitted to the arbitrator is now firmly established. *Matter of Spectrum Fabrics Corp.* [*Main St. Fashions, Inc.*], 285 App. Div. 710, aff'd 309 N. Y. 709; *Matter of S & W Fine Foods, Inc.* [*Office Employees International Union*], 8 A. D. 2d 130, aff'd 7 N. Y. 2d 1018; *Matter of Transpacific Transport Corp.* [*Sirena Shipping Co., S. A.*], 9 A. D. 2d 316, 320-321, aff'd 8 N. Y. 2d 1048; *Matter of National Cash Register Co.* [*Wilson*], 8 N. Y. 2d 377).

Perhaps the arbitrator read the Shipman award too literally; possibly another arbitrator might in construing it have given more weight to the opinion which preceded it,

and, as a result, have found that the claim for severance pay was contrary to what the parties intended and that the language of the Shipman award in such circumstances did not forbid rejection of the claim. But an award may not be set aside because others might have reached a different conclusion. As Judge Fuld said in *Matter of National Cash Register Co. (Wilson)*, 8 N. Y. 2d 377, 383-384:

> "The mere fact that a different construction could have been accorded the provisions concerned and a different conclusion reached does not mean that the arbitrators so misread those provisions as to empower a court to set aside the award. It appears clear to us that the agreement between the Company and the Union is reasonably susceptible of the construction given it by the arbitrators. Accordingly, since they acted within their powers and are not chargeable with such misconduct as is specified in section 1462 of the Civil Practice Act, the award is unassailable and, disappointing though it may be to one of the parties, must be obeyed."

The rule declared in the foregoing authorities now has statutory sanction by virtue of the declaration in § 1448-a of the Civil Practice Act, effective April 9, 1962, and, hence applicable to the present arbitration, that the court "shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute."

Though the court, therefore, may not disturb the award, it cannot withhold voicing its profound regret that MEBA has pressed the demand for severance pay. Allowance of severance pay where, not alone has there been no loss of either jobs or job opportunities, but new jobs have come into being through the entry into service of the new S. S. Santa Paula and S. S. Santa Rosa, runs counter to one's sense of fairness. The award renders a disservice to the cause of both arbitration and collective bargaining.

The satisfaction MEBA may take in the temporary advantage it has gained should be tempered by recognition that such seeming victories are bound in the end to be self-defeating.

The motion to vacate is denied and the motion to confirm the award is granted. Settle order.

Dated: April 5, 1963

SAMUEL H. HOFSTADTER
J. S. C.

Order of Appellate Division of the Supreme Court, dated February 6, 1964

At a term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York, on the 6th day of February, 1964.

Present—Hon. BERNARD BOTEIN, *Presiding Justice.*
" CHARLES D. BREITEL,
" BENJAMIN J. RABIN,
" JAMES B. M. MCNALLY,
" SAMUEL W. EAGER,
Justices.

6886

In the Matter of the Arbitration between

GRACE LINE INC., *Appellant,*

and

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, *Respondent.*

Affirmance of Order

An appeal having been taken to this Court by the appellant from an order of the Supreme Court, New York County, entered on the 17th day of April, 1963, denying appellant's motion to vacate the arbitrator's

award herein, and granting respondent's motion to confirm said award, and said appeal having been argued by Mr. Alfred Giardino of counsel for the appellant, and by Mr. David Scribner of counsel for the respondent; and due deliberation having been had thereon,

It is hereby unanimously ordered that the order so appealed from be and the same is hereby affirmed with $20 costs and disbursements to the respondent.

Enter,

VINCENT A. MASSI,
Clerk.

NOTICE OF ENTRY

Please take notice that the order, of which the within is a copy, made in the above-entitled action by the Supreme Court, Appellate Division, First Department, was entered in the office of the Clerk of said court on the 6th day of February, 1964.

Dated: March 2, 1964.

PRESSMAN & SCRIBNER,
Attorneys for Respondent,
30 Broadway,
New York 4, N. Y.

To:

LORENZ, FINN & GIARDINO,
Attorneys for Appellant,
165 Broadway,
New York 6, N. Y.

Order of the Court of Appeals of the State of New York, dated May 7, 1964

STATE OF NEW YORK, IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Seventh day of May, A. D. 1964.

Present, HON. CHARLES S. DESMOND, *Chief Judge, presiding.*

No. 354

In the Matter of the Arbitration between
GRACE LINE INC., *Appellant,*

and

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, *Respondent.*

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied with ten dollars costs.

(SEAL) A copy

GEARON KIMBALL
Deputy Clerk

APPENDIX C

New York Times editorial of October 18, 1962 (Exhibit B, 112-116):

Labor Relations at Sea

There is new evidence that nothing is incredible in the labor relations of the maritime industry. Ten ship engineers of the Grace Line have just won an award of severance pay, even though they never lost their jobs. This is quite an achievement, even in an industry where the bargaining table sometimes appears more an instrument of destruction than a means of negotiation.

The engineers were employed on the old liners Santa Paula and Santa Rosa. When the company built two new ships and named them Santa Rosa and Santa Paula in 1958, the old ships were retired. The engineers went across the pier (presumably they walked, although possibly they were carried in palanquins by company officials) and took up their jobs on the new ships.

Now it came to pass that some time later the Grace Line succeeded in disposing of the old liners, and they sailed away abroad for registry under foreign flags. In the union demand for severance pay for the men, the arbitrator noted that a past arbitration award and the company-union contract itself established that when men were removed from their jobs by reason of their ships being sold abroad, they were entitled to severance.

The men were no longer in the jobs they had on the old ships. The old ships were sold abroad. Ergo, . . . etc. A tribute indeed to those who watch over the poor seaman, known in tradition and admiralty as 'a ward of the court' because of his innocence and helplessness.